

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
MIDDLE DIVISION**

UNITED STATES

v.

JEREMY LAMAR HARRIS

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Case No.: 4:04-CR-322-RDP-TMP

**MEMORANDUM OPINION GRANTING GOVERNMENT'S MOTION FOR
RECONSIDERATION AND VACATING THE COURT'S PREVIOUS ORDER
REDUCING DEFENDANT'S SENTENCE**

On February 20, 2009, this court issued orders (Docs. #74, 75) granting Defendant's petition for a reduction in sentence (Doc. #62) pursuant to 18 U.S.C. § 3582(c)(2) and U.S.S.G. § 1B1.10. On February 26, 2009, the Government filed its motion for reconsideration (Doc. #76) arguing that Defendant was not entitled to any relief under § 3582(c)(2). The Government based its position on the Eleventh Circuit's opinion in *United States v. Williams*, 549 F.3d 1337 (11th Cir. 2008).¹ For the reasons which follow, this court concludes that the Government's motion to reconsider should be granted and that this court's orders reducing Defendant's sentence based on application of the Crack Amendment should be vacated.

The circumstances of Defendant's original sentence fall squarely within the parameters of the *Williams* decision. The sentence in Count One was mandatory life imprisonment pursuant to 21 U.S.C. §§ 841(b)(1)(A) and 851.² Defendant's total offense level was determined to be 37 and his

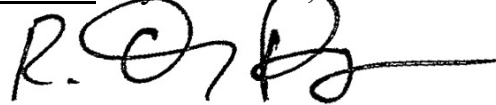
¹*Williams* held that a defendant whose original guideline range was determined by application of the statutory mandatory minimum sentence rather than by application of the guideline found at U.S.S.G. § 2D1.1 is not entitled to relief under Amendment 706, commonly known as the Crack Amendment, even when the sentencing court departs from the statutory minimum.

²The sentence in Count Two was controlled by the mandatory minimum found in 21 U.S.C. §§ 841(b)(1)(B) and 851, not less than 10 years and not more than life.

criminal history category was VI.³ Although the guideline range was 360 months to Life, it became Life with Application U.S.S.G. § 5G1.1 because the statutory minimum was higher than the guideline range. This court granted the motion to depart based on Defendant's substantial assistance⁴ and sentenced Defendant to 240 months as to each count to be served concurrently.

For the reasons stated, the court finds that the Government's motion to reconsider should be granted and that this court's orders reducing Defendant's sentence are due to be vacated. Defendant's sentence as originally pronounced on March 30, 2005, remains in full force and effect. A separate order shall be entered.

DONE and ORDERED this 30th day of March, 2009.

A handwritten signature in black ink, appearing to read 'R. David Proctor', written over a horizontal line.

R. DAVID PROCTOR
UNITED STATES DISTRICT JUDGE

³The court found that Defendant was a Career Offender under the Sentencing Guidelines, § 4B1.1. However, because his offense level was higher with application of U.S.S.G. § 2D1.1 than with application of § 4B1.1, the higher offense level controlled, *i.e.* the one computed according to § 2D1.1. Arguably, based on recent Eleventh Circuit opinions, Defendant's petition also fails based on the application of the career offender guideline. *United States v. Moore*, 541 F.3d 1323 (11th Cir. 2008). Since, however, the court agrees that Defendant's petition must fail because of application of the statutory minimum, the court will not decide this issue pertaining to the career offender finding.

⁴Pursuant to § 5K1.1 and § 3553(e), the court departed to offense level 33 and sentenced Defendant within that range without consideration of the statutory mandatory minimum.